



Siltation Agreement

THIS AGREEMENT, made this 7th day of February, 2014, by and between Monticello Woods Active Adult, LLC, and all successors in interest (the "Developer"), and the County of James City, Virginia, (the "County"), and Scott Thomas, the County's Administrator of the Erosion and Sediment Control Ordinance (the "Agent" and together with the Developer and the County, the "Parties").

WITNESSETH:

WHEREAS, Developer desires approval of plans (the "Plans") by the Agent for the County, for a project known as Subdivision/Site Plan The Settlement at Powhatan Creek, Phase III County Plan No. SP-0037-2012 / S-0015-2012 (the "Project"), located at 4101 Monticello Ave (the "Property"), which plans include provision of siltation and erosion control measures as required by Chapter 8 of the County Code; and

WHEREAS, the County desires to ensure the installation, maintenance, and adequate performance of such control measures.

NOW THEREFORE, for and in consideration of the foregoing premises and the following terms and conditions, and in further consideration of the approval of the Plans by the County and the issuance of permits for the work proposed to be done thereunder the Parties agree as follows:

1. Developer has either:

- a. deposited with Agent, and Agent by this execution hereof acknowledges that he holds, the sum of _____ dollars (\$_____) in escrow under and subject to the terms of this Agreement, or;
- b. has furnished the County an irrevocable letter of credit or bond with corporate surety, whose terms and conditions are acceptable in substance and in form to the County Attorney, in the sum of Three Hundred & Eighty Six Thousand dollars (\$386,000.00), which letter of credit or bond is under and subject to the terms of this Agreement.

The deposit, letter of credit, or bond (collectively the "Security Instrument") is designed to insure performance of the Developer's obligations and to insure reimbursement to the County in the event that it performs work or causes work to be performed, pursuant to this Agreement and Plans approved by and on file with the County.

2. In the event measures for the control of siltation and/or erosion as provided for on the Plans or on any approved revision thereof, are not constructed at or prior to the occurrence of any rainstorm or other phenomena actually causing any siltation or erosion, the County or its authorized agent shall have the right to enter upon the Property and construct such measures or do such other work as may be necessary to prevent further erosion or siltation, provided that the County shall first give notice in writing to the Developer or his superintendent of its intent so to do.

3. In the event measures for the control of siltation and/or erosion have been constructed, but fail, through overload and/or inadequate maintenance, to perform the function for which they were intended, the County or its authorized agent, may in like manner to paragraph 2 of this Agreement, enter to perform such reconstruction or maintenance as may be necessary to restore performance in accord with the Plans, or approved revisions thereof, upon giving notice in writing to the Developer or his superintendent of its intent so to do.

4. In the event there occurs siltation and/or erosion from the Property in sufficient quantity to adversely affect downstream drainage or travel on any street, road, highway, or other public way, the County may take such steps as may be necessary to restore functions to the affected drainage or travel way.

5. a. In the event the County determines work shall be performed or causes to be performed work of any nature, including labor, use of equipment and materials, under the provisions of paragraphs 2, 3, and 4 of this Agreement, either by County staff or other contractor, Agent shall draw and disburse to the County on its order such sum or sums as may be requested, provided, however, that Agent's liability so to disburse shall be limited to the undistributed balance in its hands of:

1. the escrow amount, or
2. the letter of credit, or
3. the bond

The Security Instrument may be drawn in total, if at the time the Security Instrument is to expire, if all improvements or any portion thereof are not complete and the Security Instrument has not been adequately extended or replaced to ensure completion of the improvements. In addition, the County may draw a Security Instrument in the event it is not renewed or amended to remain in effect at least ten (10) days prior to its expiration. A notice that such draw has been made shall be delivered or mailed by the County to the Developer.

- b. In the event the County calls, collects, or otherwise draws on the Security Instrument pledged under this Agreement, the Developer agrees to either pay, or have the County use the proceeds of the draw to pay, a reasonable administrative fee of \$35.00 plus any costs actually incurred by the County in drawing on the Security Instrument. The charge for an administrative fee plus costs shall apply regardless of whether the County later accepts a renewal or amendment of the Security Instrument.

6. In the event the Agent makes disbursement pursuant hereto, the Developer agrees to deposit within ten (10) days of such disbursement, an amount sufficient either:

- a. to restore escrow amount to its original balance as shown in paragraph 1; or
- b. to furnish an additional letter of credit in the amount of the draft; or
- c. to secure such additional bonds as to restore same to its original balance as shown in paragraph 1.

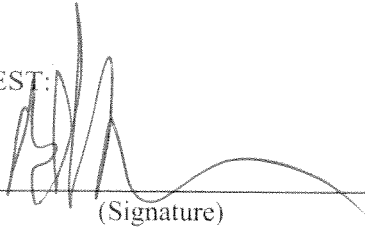
7. It is expressly agreed by the Parties hereto that it is the purpose and intent of this Agreement to ensure the installation, maintenance, and performance of measures provided for on approved Plans or revisions thereof, for the control of siltation and erosion, and for the restoration of function of facilities for drainage or vehicular travel if such facilities are adversely affected in their function by siltation or erosion from the Property, the subject of the Plans. This Agreement shall not be deemed to create or affect any liability of any party hereto for any damage alleged to result from or be caused by erosion or siltation.

8. It is expressly agreed by the Parties that either:

- a. the escrow amount shall be held by the Agent unless distributed in accordance with paragraph 5 of this document, or paid to the County as part of the cost to complete improvements required by ordinance and/or agreement, or released in writing by the County, through its Agent, or
- b. the letter of credit or bond shall be held by the Agent unless distributed in accordance with paragraph 5 of this document, or paid to the County as part of the cost to complete improvements required by ordinance and/or agreement, or released in writing by the County, through its Agent.

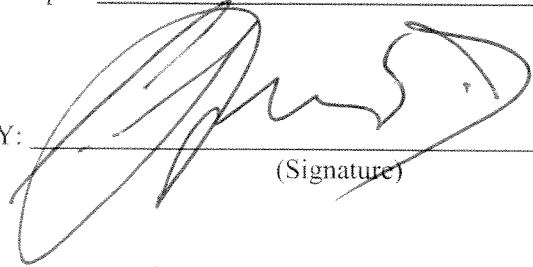
IN WITNESS WHEREOF, the Parties, being first duly authorized, have affixed their signatures on the date first above written.

ATTEST:


(Signature)

Developer: Monticello Woods Active Adult, LLC

BY:


(Signature) *Mar. 12*

Name/Title: C. Lewis Waltrip, II, Manager

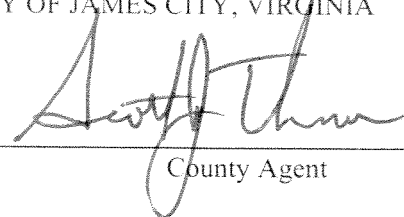
(Print Name and Title)

Approved as to form:


ASST. County Attorney

COUNTY OF JAMES CITY, VIRGINIA

BY:


County Agent

Fulton Bank

LISTENING IS JUST THE BEGINNING.®

LETTER OF CREDIT GROUP

IRREVOCABLE LETTER OF CREDIT NUMBER: D006463

PAGE 1

ISSUE DATE: FEBRUARY 07, 2014

EXPIRY DATE: FEBRUARY 07, 2015

AMOUNT: USD 386,000.00

BENEFICIARY: JAMES CITY COUNTY, VIRGINIA
ENGINEERING AND RESOURCE
PROTECTION DIVISION
101-E MOUNTS BAY ROAD
WILLIAMSBURG, VA 23185

APPLICANT: MONTICELLO WOODS ACTIVE ADULT, LLC
213 INGRAM ROAD
WILLIAMSBURG, VA 23185

ATTENTION: DIRECTOR, ENGINEERING AND RESOURCE PROTECTION
DIVISION

WE HEREBY ISSUE THIS IRREVOCABLE LETTER OF CREDIT IN YOUR FAVOR WHICH IS AVAILABLE AGAINST YOUR DRAFTS AT SIGHT ON FULTON BANK, N.A. EACH DRAFT HEREUNDER MUST BEAR UPON ITS FACE "DRAWN UNDER LETTER OF CREDIT NO. D006463, DATED FEBRUARY 07, 2014 OF FULTON BANK, N.A., LETTER OF CREDIT DEPARTMENT, ONE PENN SQUARE, LANCASTER, PA 17602," AND BE ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

YOUR WRITTEN STATEMENT THAT MONTICELLO WOODS ACTIVE ADULT, LLC HAS FAILED TO SATISFACTORILY PERFORM, PRIOR TO THE EXPIRATION OF THIS LETTER OF CREDIT, ALL OR PART OF THE TERMS AND CONDITIONS OF THE SILTATION AGREEMENT DATED FEBRUARY 07, 2014, PERTAINING TO THE SUBDIVISION/SITE PLAN THE SETTLEMENT AT POWHATAN CREEK, PHASE III, COUNTY PLAN NO. SP-0037-2012/S-0015-2012 OR ANY PLANS APPROVED BY AND ON FILE WITH THE COUNTY OF JAMES CITY AND THAT JAMES CITY COUNTY IS, IN CONSEQUENCE ENTITLED TO THE AMOUNT OF THE ACCOMPANYING DRAFT.

IN ADDITION TO THE LOCATION LISTED ABOVE, THIS LETTER OF CREDIT MAY BE DRAWN AT THE LOCAL OFFICE OF FULTON BANK, N.A., 735 THIMBLE SHOALS BLVD., SUITE 170, NEWPORT NEWS, VIRGINIA 23606. A DRAW AT A LOCAL OFFICE SHALL BE DEEMED MADE WHEN RECEIVED BY THE LOCAL OFFICE AND SHALL HAVE THE SAME CAUSE AND EFFECT AS A DRAW AT THE MAIN OFFICE OF FULTON BANK, N.A.

Fulton Bank

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LETTER OF CREDIT GROUP

IRREVOCABLE LETTER OF CREDIT NUMBER: D006463


PAGE 2

KINDLY ADDRESS CORRESPONDENCE REGARDING THIS LETTER OR CREDIT TO FULTON BANK, N.A., ATTN: LETTER OF CREDIT DEPT., ONE PENN SQUARE, LANCASTER, PA 17602. TELEPHONE INQUIRIES SHOULD BE DIRECTED TO THE LETTER OF CREDIT DEPARTMENT AT (800)610-3924.

EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, THIS CREDIT IS SUBJECT TO THE "UNIFORM CUSTOMS AND PRACTICE FOR DOCUMENTARY CREDITS", FIXED BY INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 600, 2007 REVISION.

VERY TRULY YOURS,

FULTON BANK, N.A.



AUTHORIZED SIGNATURE

Fulton Bank

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LETTER OF CREDIT GROUP

AMENDMENT TO STANDBY LETTER OF CREDIT NO. D006463

BENEFICIARY: JAMES CITY COUNTY, VIRGINIA
ENGINEERING AND RESOURCE
PROTECTION DIVISION
101-E MOUNTS BAY ROAD
WILLIAMSBURG, VA 23185

APPLICANT: MONTICELLO WOODS ACTIVE ADULT, LLC
213 INGRAM ROAD
WILLIAMSBURG, VA 23185

EFFECTIVE DATE OF AMENDMENT: JANUARY 21, 2015

LADIES AND GENTLEMEN:

THIS IRREVOCABLE STANDBY LETTER OF CREDIT HAS BEEN AMENDED AS
FOLLOWS:

-EXPIRY DATE HAS BEEN EXTENDED TO FEBRUARY 07, 2016.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

VERY TRULY YOURS,

FULTON BANK, N.A.



AUTHORIZED SIGNATURE

WE HEREBY ACCEPT AND ACKNOWLEDGE RECEIPT OF THIS AMENDMENT.

JAMES CITY COUNTY, VIRGINIA

NAME	TITLE	DATE
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2/7/16

LETTER OF CREDIT GROUP

AMENDMENT TO STANDBY LETTER OF CREDIT NO. D006463

BENEFICIARY: JAMES CITY COUNTY, VIRGINIA
ENGINEERING AND RESOURCE
PROTECTION DIVISION
101-E MOUNTS BAY ROAD
WILLIAMSBURG, VA 23185

APPLICANT: MONTICELLO WOODS ACTIVE ADULT, LLC
C/O JAMESTOWN MANAGEMENT
P.O. BOX 5787
WILLIAMSBURG, VA 23188

EFFECTIVE DATE OF AMENDMENT: MARCH 18, 2015

LADIES AND GENTLEMEN:

THIS IRREVOCABLE STANDBY LETTER OF CREDIT HAS BEEN AMENDED AS
FOLLOWS:

-APPLICANT'S ADDRESS HAS BEEN CHANGED FROM:

213 INGRAM ROAD
WILLIAMSBURG, VA 23188

TO:

C/O JAMESTOWN MANAGEMENT
P.O. BOX 5787
WILLIAMSBURG, VA 23188

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

VERY TRULY YOURS,

FULTON BANK, N.A.

Diane A. Brenner 2000
AUTHORIZED SIGNATURE

Fulton Bank

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2/17/16

LETTER OF CREDIT GROUP

AMENDMENT TO STANDBY LETTER OF CREDIT NO. D006463

BENEFICIARY: JAMES CITY COUNTY, VIRGINIA
ENGINEERING AND RESOURCE
PROTECTION DIVISION
101-E MOUNTS BAY ROAD
WILLIAMSBURG, VA 23185

APPLICANT: MONTICELLO WOODS ACTIVE ADULT, LLC
C/O JAMESTOWN MANAGEMENT
P.O. BOX 5787
WILLIAMSBURG, VA 23188

EFFECTIVE DATE OF AMENDMENT: NOVEMBER 02, 2015

LADIES AND GENTLEMEN:

THIS IRREVOCABLE STANDBY LETTER OF CREDIT HAS BEEN AMENDED AS
FOLLOWS:

-DECREASE AMOUNT BY 33,942.00 U.S. DOLLARS TO A NEW BALANCE OF
352,058.00 U.S. DOLLARS

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

VERY TRULY YOURS,

FULTON BANK, N.A.

Diana A. Brenner 1000
AUTHORIZED SIGNATURE

This original is for your records.
Thanks!



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2/17/17

LETTER OF CREDIT GROUP

AMENDMENT TO STANDBY LETTER OF CREDIT NO. D006463

BENEFICIARY: JAMES CITY COUNTY, VIRGINIA
ENGINEERING AND RESOURCE
PROTECTION DIVISION
101-E MOUNTS BAY ROAD
WILLIAMSBURG, VA 23185

APPLICANT: MONTICELLO WOODS ACTIVE ADULT, LLC
C/O JAMESTOWN MANAGEMENT
P.O. BOX 5787
WILLIAMSBURG, VA 23188

EFFECTIVE DATE OF AMENDMENT: JANUARY 11, 2016

LADIES AND GENTLEMEN:

THIS IRREVOCABLE STANDBY LETTER OF CREDIT HAS BEEN AMENDED AS
FOLLOWS:

-EXPIRY DATE HAS BEEN EXTENDED TO FEBRUARY 07, 2017.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

VERY TRULY YOURS,

FULTON BANK, N.A.

Diane Brenner LCOO

AUTHORIZED SIGNATURE

WE HEREBY ACCEPT AND ACKNOWLEDGE RECEIPT OF THIS AMENDMENT.

JAMES CITY COUNTY, VIRGINIA

Melanie Davis

NAME

Sr Engineering Assistant

TITLE

1/26/16

DATE



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2/7/18

LETTER OF CREDIT GROUP

AMENDMENT TO STANDBY LETTER OF CREDIT NO. D006463

BENEFICIARY: JAMES CITY COUNTY, VIRGINIA
ENGINEERING AND RESOURCE
PROTECTION DIVISION
101-E MOUNTS BAY ROAD
WILLIAMSBURG, VA 23185

APPLICANT: MONTICELLO WOODS ACTIVE ADULT, LLC
C/O JAMESTOWN MANAGEMENT
P.O. BOX 5787
WILLIAMSBURG, VA 23188

EFFECTIVE DATE OF AMENDMENT: JANUARY 18, 2017

LADIES AND GENTLEMEN:

THIS IRREVOCABLE STANDBY LETTER OF CREDIT HAS BEEN AMENDED AS
FOLLOWS:

-EXPIRY DATE HAS BEEN EXTENDED TO FEBRUARY 07, 2018.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

VERY TRULY YOURS,

FULTON BANK, N.A.

Diane Brenner GTM
AUTHORIZED SIGNATURE

WE HEREBY ACCEPT AND ACKNOWLEDGE RECEIPT OF THIS AMENDMENT.

JAMES CITY COUNTY, VIRGINIA

This original is for your records.